

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois corporation,

NO. 2:20-cv-00882-MLP

Plaintiff/Counterclaim  
Defendant,

V.

MICROSOFT CORPORATION, a Washington corporation,

## Defendant/Counterclaim Plaintiff.

**SUPPLEMENTAL DECLARATION OF  
MARK LORBIECKI IN SUPPORT OF  
ODS'S MOTION FOR SUMMARY  
JUDGMENT RE: MICROSOFT'S  
COUNTERCLAIM AND  
DETERMINATION OF AUTHORSHIP  
RIGHTS FOR MUSIC WORKS**

**NOTED ON MOTION CALENDAR:**

February 25, 2022

SUPPLEMENTAL DECLARATION OF MARK LORBIECKI IN  
SUPPORT OF ODS'S MOTION FOR SUMMARY JUDGMENT RE:  
MICROSOFT'S COUNTERCLAIM AND DETERMINATION OF  
AUTHORSHIP RIGHTS FOR MUSIC WORKS - i  
(2:20-cv-00882-MLP)

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
(206) 628-6600

1       1. I am an attorney for Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc.  
2 ("ODS") in the above-entitled action. I make this declaration based on personal knowledge, am  
3 over the age of 18 and competent to testify.

4       2. Attached hereto as Exhibit 6 is a true and correct copy of a spreadsheet reflecting  
5 known composers for Halo music and the actual registrations or failure to register various works,  
6 either in their proper name or at all. Microsoft has waived confidentiality relative to this  
7 document.

8       3. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the 30(b)(5)  
9 deposition of Microsoft as testified to by Christopher Hull, especially depicting the process of  
10 registering a work with ASCAP. Microsoft has waived confidentiality relative to this document.

11      4. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the 30(b)(5)  
12 deposition of Microsoft as testified to by Jonathan Segal, especially depicting the process of  
13 registering a work with ASCAP. Microsoft has waived confidentiality relative to this document.

14      5. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of the  
15 deposition of Paul Lipson especially depicting the process of registering a work with ASCAP.  
16 Microsoft has waived confidentiality relative to this document.

17      6. Attached hereto as Exhibit 10 is a true and correct copy of an email chain relating  
18 to the exploration of ODS rights in works and the registration with ASCAP. Microsoft has waived  
19 confidentiality relative to this document.

20      7. Attached hereto as Exhibit 11 is a true and correct copy of an email chain wherein  
21 Microsoft's expressed its intent not to perform registration with ASCAP. Microsoft has waived  
22 confidentiality relative to this document.

23      8. Attached hereto as Exhibit 12 is a true and correct copy of an email chain wherein  
24 discussing Attorney Jim Charne's objection on behalf of ODS to Microsoft's expressed intent

25 SUPPLEMENTAL DECLARATION OF MARK LORBIECKI IN  
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1 not to perform registration with ASCAP. Microsoft has waived confidentiality relative to this  
2 document.

3 9. Attached hereto as Exhibit 13 is a true and correct copy of an email chain wherein  
4 is further discussion of Microsoft expressed its intent not to perform registration with ASCAP.  
5 Microsoft has waived confidentiality relative to this document.

6 10. Attached hereto as Exhibit 14 is a true and correct copy of an email chain wherein  
7 Microsoft grants its license without royalty to ODS composition. Microsoft has waived  
8 confidentiality relative to this document.

9 11. Attached hereto as Exhibit 15 is a true and correct copy of an email chain wherein  
10 Microsoft expresses its own position that because Microsoft owns the work, there is no  
11 entitlement to royalties. Microsoft has waived confidentiality relative to this document.

12 12. Attached hereto as Exhibit 16 is a true and correct copy of an email chain wherein  
13 Microsoft elects not to enforce copyright claims in the form of takedown demands. Microsoft  
14 has waived confidentiality relative to this document.

15 13. Attached hereto as Exhibit 17 is a true and correct copy of an email chain wherein  
16 Microsoft grants its license without royalty to ODS composition. Microsoft has waived  
17 confidentiality relative to this document.

18 14. Attached hereto as Exhibit 18 is a true and correct copy of an email chain wherein  
19 Microsoft's contractor expresses its unwillingness to register with ASCAP, BMI, or PRO.  
20 Microsoft has waived confidentiality relative to this document.

21 15. Attached hereto as Exhibit 19 is a true and correct copy of an email chain wherein  
22 Microsoft determines that it will only pay on invoices by ODS rather than based upon actual uses  
23 by Microsoft. Microsoft has waived confidentiality relative to this document.

24  
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16. Attached hereto as Exhibit 20 is a true and correct copy of an email chain between Microsoft and ODS' attorneys to address nonpayment of various royalties and nonregistration with ASCAP. Microsoft has waived confidentiality relative to this document.

17. THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, SO STATED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES OF AMERICA.

DATED this 31<sup>st</sup> day of January 2022.

*s/ Mark Lawrence Lorbiecki*  
Mark Lawrence Lorbiecki, WSBA # 16796  
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Defendant O'Donnell/Salvatori, Inc.*

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## **CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to all CM/ECF participants.

DATED this 31<sup>st</sup> day of January 2022.

s/ Mark Lawrence Lorbiecki  
Mark Lawrence Lorbiecki, WSBA # 16796  
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Defendant O'Donnell/Salvatori, Inc.*

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